



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 10/062,369 | 01/31/2002 | Stephen S. Breese | AUS920011024US1 | 2912 |
| 50170 | 7590 | 09/28/2005 | EXAMINER | |
| IBM CORP. (WIP) c/o WALDER INTELLECTUAL PROPERTY LAW, P.C. P.O. BOX 832745 RICHARDSON, TX 75083 | | | POLLACK, MELVIN H | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 2145 | |

DATE MAILED: 09/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|------------------------|---------------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 10/062,369 | BREESE ET AL. | |
| | Examiner | Art Unit | |
| | Melvin H. Pollack | 2145 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 31 January 2002.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-59 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-59 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 29 March 2002 is/are: a) accepted or b) objected to by the Examiner.

 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 1/31/02, 7/1/05.

4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ .
5) Notice of Informal Patent Application (PTO-152)
6) Other: see attached office action.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 3, 5-7, 9, 12, 19-21, 23, 30, 32, 34-36, 38, 41, 45, 47, 49-51, 53, 56 are rejected under 35 U.S.C. 102(b) as being anticipated by Hershey et al. (5,793,753).
3. For claims 1, 30, 45, Hershey teach a method (abstract) for communicating performance information (col. 1, line 1 – col. 2, line 55), said method comprising:

- a. Collecting data from a plurality of probes (col. 4, lines 44-60), including at least one local probe and at least one remote probe (Fig. 2; col. 3, lines 10-50); and
- b. Reporting said data (col. 2, lines 50-55), at least in part (col. 5, lines 30-40).

4. For claims 3, 32, 47, Hershey teaches that said reporting further comprises outputting a plurality of items chosen from: response time data, availability data, probe location, Internet Service Provider information, time of script execution, threshold values, service level agreement violations, and error messages (col. 4, lines 44-60).

5. For claims 5, 19, 34, 49, Hershey teaches providing an alert when said data indicates an error (Fig. 4, #47; col. 5, lines 55-60).

6. For claims 6, 20, 35, 50, Hershey teaches that said error is a measured response time value greater than a corresponding threshold value (col. 3, line 60 – col. 4, line 9).

7. For claims 7, 21, 36, 51, Hershey teaches that said alert is provided via a system management computer (col. 3, lines 50-60; col. 4, lines 10-20).
8. For claims 9, 23, 38, 53, Hershey teaches outputting in a special mode any measured response time value that is greater than the corresponding threshold value (col. 3, line 65 – col. 4, line 1; “appropriate display”).
9. For claims 12, 41, 56, Hershey teaches outputting in a special mode an indication of an application’s lack of availability (col. 4, lines 49-50; alarm condition = loss of signal).

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 2, 8, 10, 11, 13-15, 18, 22, 24, 25, 27, 28, 31, 37, 39, 40, 42-44, 46, 52, 54, 55, 57-59 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hershey as applied to claims 1, 16, 30, 45 above, and further in view of Schwaller et al. (6,901,442).
12. For claims 2, 18, 31, 46, Hershey teaches that said reporting further comprises reporting a first subset of said data that originates from said at least one local probe (Fig. 2, #22a), and reporting a second subset of said data that originates from said at least one remote probe (Fig. 2, #22b). Hershey does not expressly disclose details regarding reporting and GUI, and therefore does not expressly disclose employing a similar reporting format for said first subset and said second subset, whereby comparison of said first subset and said second subset is facilitated. Schwaller teaches a method (abstract) of monitoring network nodes and reporting performance

data (col. 1, line 1 – col. Col. 6, line 20) in which the reporting method employs a similar reporting format for said first subset and said second subset (Fig. 9B), whereby comparison of said first subset and said second subset is facilitated (col. 14, lines 5-20). At the time the invention was made, one of ordinary skill in the art would have used Schwaller's GUI to improve reporting methods and further to allow administrators to better study data and locate problems (col. 15, lines 20-55).

13. For claims 8, 22, 37, 52, Hershey does not expressly disclose providing a clearing message when said error no longer is detected. Schwaller teaches the negation of error messages when trend measurements indicate improvement for the error message (col. 20, lines 35-45). At the time the invention was made, one of ordinary skill in the art would have added the clearing of error messages to Hershey so that administrators may know which problems require attention (col. 17, lines 30-35).

14. For claims 10, 13, 24, 27, 39, 42, 54, 57, Hershey does not expressly disclose that outputting in a special mode further comprises outputting in a special color. Schwaller teaches this limitation (col. 13, lines 55-65). At the time the invention was made, one of ordinary skill in the art would have added color coding to make error determination easier for administrators (col. 3, lines 3-5).

15. For claims 11, 14, 25, 28, 40, 43, 55, 58, Hershey and Schwaller do not expressly disclose that said special color is red. Examiner takes Official Notice (see MPEP § 2144.03) that using red to delineate problematic conditions in a computer networking environment was well known in the art at the time the invention was made. Further, the color red, which also happens to be the color of blood, is used as an indicator of danger or warning for a wide variety of

situations and for a wide variety of physiological and sociological reasons. At the time the invention was made, one of ordinary skill in the art would have made the error messages red for aesthetic reasons and further because of the role that the color red plays in society and within the computer art.

16. The Applicant is entitled to traverse any/all official notice taken in this action according to MPEP § 2144.03. However, MPEP § 2144.03 further states "See also In re Boon, 439 F.2d 724, 169 USPQ 231 (CCPA 1971) (a challenge to the taking of judicial notice must contain adequate information or argument to create on its face a reasonable doubt regarding the circumstances justifying the judicial notice)." Specifically, In re Boon, 169 USPQ 231, 234 states "as we held in Ahlert, an applicant must be given the opportunity to challenge either the correctness of the fact asserted or the notoriety or repute of the reference cited in support of the assertion. We did not mean to imply by this statement that a bald challenge, with nothing more, would be all that was needed". Further note that 37 CFR § 1.671(c)(3) states "Judicial notice means official notice". Thus, a traversal by the Applicant that is merely "a bald challenge, with nothing more" will be given very little weight.

17. For claims 15, 44, 59, Hershey does not expressly disclose reporting results of each script execution by said plurality of probes, but does teach that the probes are programmable as to monitoring of the system (col. 5, lines 10-40). Schwaller teaches the reporting of test script results (col. 9, lines 30-50). At the time the invention was made, one of ordinary skill in the art would have added scripting in order to perform traffic simulation (col. 7, line 55 – col. 8, line 50) that is well known in legacy systems (col. 2, lines 20-35).

18. Claims 4, 16, 17, 26, 29, 33, 48 rejected under 35 U.S.C. 103(a) as being unpatentable over Hershey as applied to claims 1, 30, 45 above, and further in view of DeLuca et al. (6,792,455).
19. For claims 4, 16, 17, 33, 48, Hershey does not expressly disclose comparing said data with at least one threshold value derived from a service level agreement, and reporting results of said comparing. DeLuca teaches a method (abstract) of performance monitoring of network clients (col. 1, line 1 – col. 4, line 35) that includes service level agreement monitoring (col. 11, lines 20-55, in view of col. 15, lines 5-10). At the time the invention was made, one of ordinary skill in the art would have combined the inventions in order to ensure that SLAs are not violated (col. 2, lines 45-55).
20. Claims 26 and 29 are drawn to the limitations in claims 4 and 9. Therefore, since claims 4 and 9 are rejected, claims 26 and 29 are also rejected for the reasons above.

Claim Rejections - 35 USC § 112

21. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
22. Claims 15, 44, 59 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
23. Claims 15, 44, and 59 recite the limitation "each script execution" in line 2. There is insufficient antecedent basis for this limitation in the claim. None of the other claims recite the limitation of a script, let alone its function and usage. More information regarding scripting must be added to the claims.

Conclusion

24. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. They cover a variety of configurations for monitoring remote systems and reporting data to a central location. Some are drawn to monitoring data other than network performance metrics that still fulfill a 102 rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melvin H. Pollack whose telephone number is (571) 272-3887. The examiner can normally be reached on 8:00-4:30 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rupal D. Dharia can be reached on (571) 272-3880. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MHP
16 September 2005



RUPAL DHARIA
SUPERVISORY PATENT EXAMINER